

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Miller Media Group)	
Petition For Rulemaking)	
To Allow The Option Of)	FCC Docket No. RM-11331
Local Programming)	
On FM Translator Stations)	

WRITTEN COMMENTS OF DON SCHELLHARDT, ESQUIRE KI4PMG

I am Don Schellhardt, Esquire KI4PMG of Roanoke, Virginia. I am presently affiliated with the Master of Arts in Liberal Studies program of Hollins University.

I was one of the 3 signatories of the Petition For Rulemaking which triggered the Federal Communications Commission's first deliberations, in FCC Docket RM-9208, on establishing a Low Power FM (LPFM) Radio Service.

I was also one of the 5 signatories of the Petition For Rulemaking which triggered the Commission's first deliberations, in FCC Docket RM-11287, on establishing a Low Power AM (LPAM) Radio Service.

In addition, I co-founded THE AMHERST ALLIANCE, at a meeting in Amherst, Massachusetts on September 17, 1998. I went on to lead THE AMHERST ALLIANCE -- a Net-based, nationwide citizens' advocacy group for media reform in general and Low Power Radio in particular -- for a cumulative total of 5 years.

During 2003 through 2004, I was Vice President, Government Relations and Membership Development for the NATIONAL ANTENNA CONSORTIUM (NAC).

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In this post, I urged the FCC and/or Congress to override bans on Amateur Radio Service antennas by restrictive covenants and/or Homeowners' Associations (HOAs).

Presently, a Schellhardt/Leggett Petition For Rulemaking on Electromagnetic Pulse (EMP), in Docket RM-10330, is pending review by the 5 Commissioners. An appeal of denial of the Petition in June of 2002, by Commission staff, still awaits action.

Incorporation By Reference
Of Other Filings In FCC Docket RM-11331

I incorporate by reference two documents which have been filed in this Docket:

The individually filed Written Comments by Nickolaus E. Leggett
N3NL
of Reston, Virginia (submitted on June 1, 2006);
And
The jointly filed Written Comments by Nick Leggett and myself
(submitted
electronically on June 2, 2006).

By incorporating these documents, I affirm once again that the endorsement of the RM-11331 Petition, by Nick Leggett and myself, is subject to 3 important caveats:

Retention of the proposed 25-mile limit for determining what translator programming is defined as “local”;
And
Avoidance of any erosion of the LPFM Radio Service by the “local programming” FM translators;
And
Prohibition of any use of “local programming” to excuse any FM translators from accountability for errors and/or improprieties, whether they occurred during the Great Translator Invasion or at some other time.

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**There Is NOT Already A Service Which Fulfills
The Proposed Function Of “Locally Programmed” Translators**

I am focusing these Written Comments on the assertion -- by REC NETWORKS of Arizona, The Colleges of the Seneca in New York and others -- that there is already a service, in the form of LPFM, that meets the needs which “locally programmed” translators would serve. I challenge, heartily, this assertion.

First of all:

LPFM, particularly as it is now implemented by the FCC, is too narrow to fill all of the “niche markets” for community radio.

When Nick Leggett and I first filed our Petition For Rulemaking on Low Power FM, we titled it a Petition for Low Power Radio. We envisioned that the Service would operate on both the FM Band and the AM Band.

We also envisioned that Low Power Radio would include both non-commercial and commercial stations. Certainly, we never envisioned that there would be a built-in bias against newcomers in the allocation of licenses.

The AM portion of our Petition was the first to be tossed out by the FCC. The 100% non-commercial mandate came with the issuance of the final rule in January of 2000, as did the stunning decision to hand virtually all contested licenses over to long-established non-profits.

An additional distortion developed when the FCC authorized both 100-watt and 10-watt LPFM stations, in January of 2000, but then decided to wait indefinitely to open “filing windows” for the 10-watt LPFM stations. The delay has now been 6 and a half years, and counting, during which time the already under-served urban areas have been even more under-served.

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At the same time, some highly rural areas -- basically, locations falling outside of both Metropolitan and Micropolitan Statistical Areas, as measured by the U.S. Census Bureau -- have been deprived of LPFM stations because the maximum power levels are too low. Such areas often need LPFM stations that broadcast at 250 watts, rather than 100 watts. Happily, “locally programmed” translators would transmit at 250 watts.

Basically, an LPFM Radio Service that should have been opened to newcomers, and/or to commercial licensees, was squeezed down to the single model of totally non-commercial stations operated almost solely by established non-profit groups. Meanwhile, the Three-Tiered System that THE AMHERST ALLIANCE proposed to the FCC in 1999 -- 250 watts for highly rural areas, 100 watts for typical areas and 10 watts for highly urban -- was whittled down to two Tiers in theory, and one Tier (set at 100 watts) in practice.

It has now become clear to me, By The Way, that the ideal approach to power levels is a Five-Tiered System: 250 watts for highly rural areas, 100 watts for typical areas, 10 watts for urban areas and 1 watt for highly urban areas (such as Detroit or Boston) where even a 10-watt LPFM station may not “fit” on the radio spectrum.

The thing is:

Not all of these Tiers have to be crammed into the structure of LPFM. We can have 250-watt “locally programmed” translators, 100-watt LPFM stations, 10-watt stations for both LPFM and LPAM and 1-watt (or even half a watt) Part 15 AM stations.

Why not? “There’s more than one way to skin a cat.”

First, however, you have to let go of the idea that there’s only one way.

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This leads me to my second observation:

I truly fail to understand why REC NETWORKS, and others, are so adamant that LPFM, as currently constituted, should be the one and only model for community-sized, community-focused radio stations on the FM Band.

So long as no existing or future LPFM stations would be displaced by the new “locally programmed” translators, I am flabbergasted that advocates of broadcast localism would be troubled by the emergence of an additional form of broadcast localism.

In the parlance of the proverbial “man (or woman) on the street: Why is it “any skin off REC’s back” if another form of community-sized, community-focused radio broadcasting is permitted to emerge? So long as neither current nor future LPFM stations are hurt by this policy change, why should commenters like REC care?

The answer, I suspect, is that some advocates of LPFM have a Messianic zeal to fill every possible slot on the radio spectrum with stations that are owned exclusively by non-profit organizations, which operate exclusively without airing any commercials.

I do not understand why commercial community stations cannot co-exist with non-commercial community stations, so long as both groups have a place somewhere on the radio spectrum. I have never understood this ... I do not understand this now ... and in all likelihood I will not understand in this future.

Why can’t we all just “get along”? Why can’t we share?

I am particularly stunned by this attitude because it follows a total victory by those with REC’s viewpoints in the structuring of the LPFM Radio Service.

Much to the detriment of the community radio community as a whole, the RECs of the world persuaded the FCC, back in 2000, to require that every single LPFM license -- every last one -- must be non-commercial. Then the FCC added a “bonus point” which creates a virtually insurmountable preference, in the case of mutually exclusive LPFM applications, for long-established non-profit organizations.

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As a result, the LPFM Radio Service is heavily biased against newcomers and totally closed to entrepreneurs.

If total control of every single LPFM license is still not enough to satisfy the zealots for non-profit, non-commercial community radio stations, then I can only call this attitude unreasonable. Reasonable people negotiate. Reasonable people cut deals. Reasonable people share. People who insist on having it all make me nervous.

Total victory, on every battlefield, is not the kind of result that politics in a democracy produces. Democracy generates diversity. Total victory, on every front, is not a realistic expectation in a democratic Republic.

Speaking only for myself, I continue to favor allowing both the airing of commercials by LPFM stations and an end to the intense bias in favor of established non-profits in the allocation of LPFM licenses. However, if I could choose to drop only one of these restrictions, I would end the bias against newcomers. I would blow it away.

In any event:

Many of us who had wanted a more open and diverse LPFM Radio Service decided to work with what we had been given. We also vowed,

however, that we would not give up on developing new forms of community broadcasting: ones where newcomers would be welcome and station operators would be free to decide for themselves whether to air commercials or not.

Where do you think the LPAM Petitions, including the one in RM-11287, came from? Where do you think the RADIO READY TO GROW Petition, for a boost in power ceilings for Part 15 AM stations, came from?

These Petitions came from the people whom the FCC has shut out of LPFM. They come from the victims of the total victory that groups like REC NETWORKS attained when LPFM was first structured. They came from the entrepreneurs who are still trying to find a way into community radio.

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These Petitions will keep coming, again and again, until the people who were totally shut out of LPFM are accorded a place on the spectrum. If the Petitions do not succeed, there will be efforts to obtain corrective Congressional legislation. If the efforts to obtain corrective Congressional legislation do not succeed, there will be Political Action Committees and maybe even political candidates.

Eventually ... there will be results.

Some people -- maybe most people -- will give up when they are shut out repeatedly. However, 6 years after the entrepreneurs of community radio were shut out of LPFM by the FCC, it should be clear they are not the type to give up. They will be back, and back, and back, until someone at the FCC opens doors like an LPAM Radio Service that welcomes newcomers and "locally programmed" translators that are allowed to air commercials.

As a final word, let me say this:

It is no accident that the various Petitions have focused on opening up new forms of community-sized, community-focused radio broadcasting.

Possible attempts to

re-open the structure of LPFM have been consciously placed to one side.

THE AMHERST ALLIANCE, and others, have had discussions with certain advocates of keeping LPFM limited to non-profit, non-commercial licensees. As a result, Amherst and its allies will not attempt to re-open the current version of LPFM -- so long as those who support that current version do not attempt to keep Amherst and others from developing new, and more palatable, alternatives to LPFM.

This approach leaves the non-profit, non-commercial zealots with the total victory they have won on LPFM. It leaves the rest of the community radio movement with at least the hope of something better. Is it really wise for non-profit, non-commercial zealots to try to leave us with no other option except to re-open LPFM?

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The RM-11331 Petition Should Be Viewed In Context

On the following page, I have reproduced a Chart which also appears in the Written Comments that Nick Leggett and I have filed in FCC Docket RM-11331.

Those jointly filed Written Comments, along with Nick Leggett's individual Written Comments, have been incorporated into my individual Written Comments by reference.

The Chart attempts to help the Commission to view the RM-11331 proposal within the context of the total range of proposals for establishing community-sized, community-focused radio stations (transmitting at 250 watts or less).

Each of the currently pending Petitions -- the RM-11331 Petition, the revised Low Power AM Petition in Docket RM-11287 and the RADIO READY TO GROW (RRTG) Petition for power-boostered Part 15 AM stations - - addresses a different gap in the post-LPFM pattern of community-sized, community-focused radio.

The Chart demonstrates how 5 different pieces of the puzzle -- 100-watt LPFM, 10-watt LPFM, 10-watt LPAM, power-boostered Part 15 AM stations and the Petition in Docket RM-11331 -- can fit together to form a comprehensive policy.

Conclusion

For the reasons set forth herein, I urge the Commission to adopt all of the recommendations I have presented.

COMMUNITY-SIZED, COMMUNITY-FOCUSED RADIO STATIONS: PUTTING ALL THE PIECES OF THE PUZZLE TOGETHER

(Underlining means that additional FCC action is required)

Are Stations Generally Viable Air In These Areas? <u>Commercials?</u>	Are Licenses Open To <u>Newcomers?</u>	May Stations
Highly <u>Typical</u> Highly <u>Rural</u> <u>Urban</u>		

**“Local
Programming”
Translator: 250W**
[5/06 Miller Media
Proposal, Docket
RM-11331]

YES YES No YES YES

**Low Power
FM (LPFM): 100W**
[Authorized in
2000 and now
operating]

Maybe YES No No No

LPFM: 10W
[Authorized in
2000, but not yet
implemented]

No YES YES No No

**Low Power
AM [LPAM]: 10W**
[5/06 Revision
of Amherst Et Al.
Proposal, Docket
RM-11287]

No YES YES YES YES

**Part 15 AM:
Power Boosted**
[11/05 Radio
Ready To Grow
Proposal, not yet
Docketed]
YES

No Maybe YES YES

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Conclusion

For the reasons I have stated, we urge the Commission to adopt all of the recommendations I have presented.

Respectfully submitted,

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Dated: _____

June 2, 2006